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July 14, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

RE: Telecommunications Carriers' Use of Customer Proprietary Network Information and other Customer Information, CC Docket 96-115
Ex Parte

Dear Ms. Salas:

This is to notify you that on July 14, 1998, A. Kirven Gilbert, Linda Lancaster and Ben Almond, all of BellSouth Corporation met in separate meetings with Kyle Dixon, Legal Advisor to Commissioner Michael K. Powell, Kevin Martin, Legal Advisor to Commissioner Harold Furchtgott-Roth and Paul Gallant, Legal Advisor to Commissioner Gloria Tristani concerning the referenced subject. The focus of the discussion centered on the electronic audit requirement as a costly and burdensome requirement for BellSouth and the Industry to implement by the effective date of January 26, 1999. The attached document was used for discussion purposes.

Please associate this notification and accompanying document with the referenced docket proceeding.

If there are any questions concerning this matter, please contact the undersigned.

Sincerely,

Ben G. Almond

Ben G. Almond
Vice President-Federal Regulatory

Attachment

cc: Kyle Dixon
Kevin Martin
Paul Gallant

No. of Copies rec'd 0+1
List A B C D E

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Ex Parte Presentation

CC Docket No. 96-115

Telecommunications Carriers' Use of Customer Proprietary Network Information (CPNI)

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THE NEED FOR A STAY OF THE ELECTRONIC AUDIT REQUIREMENT

- **The Requirement:**
  - Carriers must maintain an electronic audit mechanism that tracks access to customer accounts, including when a customer's record is opened, by whom, and for what purpose; record is to be retained for one year. (Order ¶ 199; Rule § 64.2009(c).
  - Requirement to be enforced 1/26/99 (Order ¶ 202).
- **Expectation Reflected in Order:**
  - "Such access documentation will not be overly burdensome" (Order ¶ 199).
- **Reality Reflected in Numerous Reconsideration Petitions and Supporting Pleadings:**
  - Requirement is extremely burdensome, imposes potentially hundreds of $millions cost on industry, competes with Y2K implementation for human expertise/resources, and produces no commensurate benefits.
- **Need/Interim Solution:**
  - Stay of requirement pending reconsideration.
  - Stay is needed <u>now</u> to avoid likely economic waste.

THE STAY STANDARD

- **Instant Circumstances Satisfy 4-Prong Stay Standard (Virginia Petroleum Jobbers)**

1. Likely to prevail on the merits

- Requirement is at odds with Commission's intent not to impose burdensome requirement
- Requirement does not survive cost/benefit analysis
- Substantial and widespread concurrence across industry and no opposition

2. Irreparable harm

- Implementation cost estimates range from $60-70K for small carriers to hundreds of $millions for larger carriers

Examples:
- MCI: up to $1 billion per year;
- BellSouth: at least $75 million over 5 years;
- NTCA: $64-100 per line;
- AT&T: $125 million+ even for requirement limited to certain systems

- Needless expenditures on systems slated for retirement/replacement shortly after effective date

THE STAY STANDARD (cont.)

- Drain on Y2K and other IT-intensive projects
- Current expenditures of monetary and human resources will be forever lost if requirement is lifted (or modified) on reconsideration

3. **No interested party harmed if stay is granted**

- Multiple parties from all industry segments have requested relief; none has opposed it
- Substantive CPNI requirements remain in effect, protecting customer rights
- Compliance assured through training, certification, supervisory review

4. **Public interest favors a stay**

- Public interest disfavors economic waste
- Stay will not affect customers' substantive CPNI rights

PROCEDURAL AND TIMING ISSUES

- **Commission Can Issue Stay on Its Own Motion**
  - Record is adequately developed
  - Precedent - Caller ID
- **Stay is Needed Promptly**
  - By 8/15/98 to avoid/minimize unnecessary financial outlays and commitments (e.g., contracts with third party software vendors)

Carriers	PFRs	Estimated $ Impact
ALLTEL	• Effective date of Order should be stayed pending reconsideration • Safeguards are overly burdensome • …use restrictions could take 9-18 months to implement for largest carriers (p8)	
Ameritech	• …Commission should eliminate its electronic audit requirement… (p11) • If Ameritech were required to "track" each pre-processing step, this would generate over a trillion records alone (p10)	
AT&T	• should be eliminated (p8) • unjustifiable requirement • electronic audit cannot be justified under a cost benefit analysis because the costs far outweigh any conceivable consumer privacy or compliance benefit (p11) • …development could be expected to take 2-4 years (p13)	AT&T estimates that creating such an electronic audit system would require one time out-lays exceeding 270 million, and ongoing charges would exceed that amount annually. (p11) …expenditures in the hundreds of millions of dollars for the electronic audit trail requirement would be counterproductive in that the resulting systems would not serve to increase carrier compliance with CPNI requirements, yet at the same time, they would divert substantial resources and decrease operating efficiency, all to the detriment of the carrier's customers. (p12)
Bell Atlantic	• Commission should eliminate Section 64.2009(a) and (c) of the Rules, which specify systems requirements. (p22)	

Carriers	PFRs	Estimated $ Impact
BellSouth	• Access documentation/audit trail "safeguard" imposed by the Commission ⇒ is not required by the Act ⇒ is costly and burdensome ⇒ does not serve the public interest ⇒ should be eliminated (p18) • Elimination of the access documentation requirement will not leave customers records open to uncontrolled abuse. As the Commission noted in the Order, use restrictions … can and will be effective when coupled with personnel training. (p23)	…preliminary estimates are that five-year implementation costs will easily exceed $75 million for BellSouth alone. This figure approaches the $100 million the Commission could not find justifiable for an access restriction requirement and is more than 100 times the $700,000 that the Commission seems to have found more palatable for a use restriction requirement.
CompTel	• Commission should reconsider its computer system upgrades rules … develop a record on the costs and benefits of requiring carriers to rewrite their computer systems to track information related to CPNI. (Section V)	
Frontier	• …requirement that it also monitor the purpose for which CPNI is accessed, however, is likely unnecessarily burdensome. (p4) • This rule would be expensive and burdensome to implement, and in an environment of rapid change, it may prove to be transitional at best. No business can justify the expenditure independently. (p4) • By eliminating this one requirement, the Commission will not lose the ability to audit carrier compliance with section 222 or otherwise ensure that carriers comply with regulations. Comparing the time and expense that would be required to comply with this requirement with the relatively minor benefits that its retention would engender, the Commission should rescind it.	… believes that this effort would take several months and cost a substantial amount of money. (p4)

Carriers	PFRs	Estimated $ Impact
GTE	• Rule 64.2009(c) requires that carriers must maintain an electronic audit mechanism in its belief that "[s]uch access documentation will not be overly burdensome because many carriers maintain such capabilities to track employee use of company resources for a variety of business purposes unrelated to CPNI compliance. If applied to all systems, such an undertaking would impose a data processing burden on carriers that could rival Y2K requirements. (p41-42)	
Independent Alliance	• overly burdensome, impractical and costly • impacts Y2K	$150K to 200K
LCI	• Carriers should be given at least 18 months to implement any systems modifications necessary to comply with the new rules. (p6) • …gather specific evidence of the costs and benefits before imposing detailed compliance obligations. (p6)	…LCI is still in process of developing specifications … it is apparent that the cost will reach into the many millions of dollars (p-4)
MCI	• Excessively burdensome and unnecessary (p34) • take years to implement • divert resources from other more vital projects such as Y2K	…billions of records would need to be recorded every day to maintain a complete audit trail. Given the current cost of mainframe data storage and associated overhead, as much as $4 million of additional storage would be required to maintain one day's worth of auditing information, or over 1 billion per year (p37-38)

Carriers	PFRs	Estimated $ Impact
National Telephone Cooperative Association	• Commission should forbear from applying the complex auditing and tracking procedures...(p7)	NCTA's members estimated they would be required to spend between $60,000.00 to $70,000.00 for the capability. For companies with just 600 access lines, this translates to more than $100.00 per line. (p9)
OmniPoint Communications	• Electronic audit rules would take effect in early 1999, when carriers' information systems departments will be under enormous pressure to complete Year 2000 updates. (p15)	
Personal Communications Industry Association (6/29/98 Pet. for Forbearance)	• Electronic audit trail requirement requires carriers to re-write their customer support software and maintain a huge volume of electronic data for which there is no business purpose; problem is multiplied over thousands of carriers. (pages 19-20)	
Sprint	• 265K Person Hours (p4) • 127 employees full-time for 1 year • ...the Commission does not cite to any record evidence demonstrating that "unauthorized casual perusal of customer accounts" is a significant problem. (p4) • 8 to 24 months (p3)	$19.6 million (p4)
TDS	• At the very least, the Commission should change its "verdict first" and "trial later" approach. (p3) • The audit tracking and reporting function could not be achieved by any upgrade TDS Telecom could discover, so that its systems would have to be completely overhauled or replaced...(p13)	...at a cost of tens of millions of dollars. (p13)

Carriers	PFRs	Estimated $ Impact
USTA	• …costly, inefficient, overly regulatory (p9) • …needlessly impose costs, introduce inefficiencies in carrier processes and focus on "speculative dangers." (p11) • A better approach would be for the Commission to stay the rules concerning the safeguards until it acts upon this and other reconsideration petitions. Then, on reconsideration, the Commission should rescind Section 64.2009 of its rules. (p15).	
Vanguard Cellular	• Complexity of compliance is increased because many of the underlying systems used by CMRS providers must be changed not only to address the CPNI rules, but also to ensure Year 2000 compliance, provide number portability, or to meet other requirements that will come into effect in the next 18 months. (p8)	